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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 193.

NELSON WILLIAMSON, COLLECTOR OF THE TOWNSHIP OF NORTH BRUNSWICK, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW JERSEY AND THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

FILED NOVEMBER 6, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JUNE 26, 1888.

1 New Jersey Supreme Court.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK

vs.

NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

A Statement of Facts Agreed upon by the Counsel of the Respective Parties in this Cause.

2 New Jersey Supreme Court.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK

vs.

NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

1. By special act of the Legislature, approved February 28th, 1860 (P. L. 1860, page 162), parts of the townships of North Brunswick and Monroe, in the county of Middlesex, were set off and established a separate township, to be called East Brunswick, and part of the township of North Brunswick was set off and established a separate township, to be called the township of New Brunswick, and the township committees of the said townships of North Brunswick, East Brunswick, and New Brunswick were authorized and required to divide the real and personal property of the township of North Brunswick between said townships.

2. The Poor Farm of the original township of North Brunswick was situate within the limits of what remained of the township of North Brunswick after the setting off of the townships of East Brunswick and New Brunswick as aforesaid.

3. By special act of the Legislature, approved March 15,
3 1861 (P. L. 1861, page 507), the said township of New Brunswick and the city of New Brunswick were declared one corporate body under the name of the corporation of the city of New Brunswick, and the said corporation was made subject to all the liabilities of the inhabitants of the township of New Brunswick.

4. The said Poor Farm and the personal property thereon were never divided between said townships of North Brunswick and East Brunswick and the said corporation of the city of New Brunswick, but said townships agreed to sell and convey their interests in the same to said corporation.

5. By special act of the Legislature, approved February 18th, 1862 (P. L. 1862, page 52), the township committees of North Brunswick and East Brunswick were authorized to convey all the interests of

the said townships in said farm and the personal property thereon to the said corporation, and it was thereby further enacted that the said Poor Farm and personal property thereon should be at all times thereafter liable and subject to taxation by the said township of North Brunswick so long as it should be embraced in the limits of said township of North Brunswick.

6. By virtue of the authority thereby given the township committees of said townships sold and conveyed said farm and the personal property thereon to said corporation by deed of conveyance bearing date March 27th, 1862, and recorded in the office of the clerk of Middlesex county, in Book 87 of Deeds, page 541, a true copy of which deed is hereto annexed.

7. The said corporation of the city of New Brunswick entered into possession of said farm and the personal property thereon under the contract expressed in said deed of conveyance, and are still in possession of the same, and the said farm is still located in the limits of the township of North Brunswick.

8. The said farm and property have been duly assessed by the township of North Brunswick each year since said sale and conveyance, and the taxes so assessed have been paid by the corporation of the city of New Brunswick to the township of North Brunswick up to and including the year 1877, when further payments were refused on the ground that said Poor Farm was used exclusively for charitable purposes, and therefore was not liable to taxation.

4

9. This certiorari brings up the assessment for the year 1878 for the purpose of determining whether said farm and personal property thereon are liable and subject to taxation by said township of North Brunswick.

HOWARD MacSHERRY,
Attorney for Plaintiff in Certiorari.
JOHN S. VOORHEES,
Attorney for Defendant in Certiorari.

5

Deed.

From James C. Edmonds, William Dunham, Abm. L. Van Liew, Ellsworth Farmer, and James H. Webb, township committee of the township of North Brunswick, and John Griggs, John Culver, Charles P. Blew, and Joseph H. Bloodgood, township committee of the township of East Brunswick, to the corporation of the city of New Brunswick.

This indenture, made this 27th day of March, in the year of our Lord one thousand eight hundred and sixty-two, between James C. Edmonds, William Dunham, Abraham L. Van Liew, Ellsworth Farmer, and James H. Webb, township committee of the township of North Brunswick, John Griggs, John Culver, Charles P. Blew, and Joseph H. Bloodgood, a majority of the township committee of the township of East Brunswick, in the county of Middlesex and State of New Jersey, of the first part, and the corporation of the city

of New Brunswick, in the State of New Jersey, of the second part, witnesseth:

That the said party of the first part, for and in consideration
6 of the sum of two thousand six hundred and eleven dollars and thirteen cents, lawful money of the United States of America, to them, the said party of the first part, in hand well and truly paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, being fully satisfied, contented, and paid, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, to the said party of the second part and to their successors and assigns forever, all that certain farm and tract of land and premises known as the Poor Farm, situate, lying, and being in the township of North Brunswick, in the county of Middlesex and State of New Jersey, 'butted and bounded as follows: Beginning at the southeasterly corner of a lot of land of Thomas Van Deursen on George's road, thence running along said Van Deursen's line north seventy-one degrees and twenty-five minutes west twenty-three chains to another corner of said Van Deursen's land; thence along his land north eighteen degrees and twenty-five minutes east five chains and ten links to Mill lane; thence along Mill lane north seventy-one degrees and thirty minutes west ten chains and fifteen links; thence still along Mill lane north sixty-two degrees thirty minutes west two chains and sixty links to a corner of land formerly — David Freeman; thence along the line of said land south forty-four degrees twenty-five minutes west thirty chains and twenty-five links; thence south sixty-two degrees and five minutes east thirty-one chains and fifty links to a corner of Belcher's land; thence north forty-four degrees and thirty minutes east ninety-six links to another corner of Belcher's land; thence south along the line of Belcher's land forty-three degrees and thirty minutes east thirty chains to George's road; thence along said road north twenty-six degrees fifteen minutes east three chains and eighty-five links; thence still along said road north three degrees thirty minutes east nine chains; thence still along said road north five degrees east seven chains and sixty-five links; thence still along said road north two degrees thirty minutes west six chains;
7 thence still along said road north fifteen degrees thirty minutes west seven chains thirty-five links; thence still along said road north sixteen degrees east two chains and eight links; thence still along said road north thirty degrees forty-five minutes east six chains and eight links, to the place of beginning, containing one hundred and forty-one acres.

The above-described farm and premises are conveyed by the parties of the first part aforesaid by virtue of the power and authority in them vested by the act of the Legislature of the State of New Jersey entitled "An act to authorize the township committees of the townships of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the Poor Farm, in the township of North Brunswick, together with all the personal property on said farm," passed 18th February,

A. D. 1862, a copy of which is hereto annexed and taken as part of this deed.

STATE OF NEW JERSEY.

An act to authorize the township committees of the township of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the Poor Farm, in the township of North Brunswick together with all the personal property on said farm.

Whereas, by an act of the Legislature passed February twenty-eighth, anno Domini one thousand eight hundred and sixty, the then township of North Brunswick was divided into the townships of North Brunswick, East Brunswick, and New Brunswick, and the town committees of said townships were authorized and required to divide the real and personal property of the township of North Brunswick between the new townships of North Brunswick, East Brunswick, and New Brunswick; and whereas the Poor Farm, which is situate in the limits of the present township of North Brunswick and which belonged to the former township of North Brunswick and the personal property thereon has now been divided, but is owned and held in common by the said townships of North Brunswick,
8 East Brunswick, and the corporation of the city of New Brunswick, which corporation has, by an act of the Legislature passed March fifteenth, anno Domini one thousand eight hundred and sixty-one, succeeded to and become invested with and entitled to all the rights and property of the said township of New Brunswick; and whereas such ownership and holding in common is found inconvenient and injurious; and whereas the said townships of North Brunswick and East Brunswick have agreed with the corporation of the city of New Brunswick to convey and sell to the said corporation of the city of New Brunswick all their and each of their right, title, interest, and estate in the said Poor Farm and personal property thereon for the sum of two thousand six hundred and eleven dollars and thirteen cents, the value of the interest of those townships therein: Therefore

1. Be it enacted by the senate and general assembly of the State of New Jersey, That the township committees of the townships of North Brunswick and East Brunswick, or a majority of each of the said town committees, be, and they are hereby, authorized and empowered to convey all the right, title, interest, and estate of the said townships in the said Poor Farm and the personal property thereon to the said corporation of the city of New Brunswick for the sum aforesaid.

2. And be it enacted, That the said Poor Farm and the personal property thereon shall be at all times hereafter liable and subject to taxation by the said township of North Brunswick so long as it is embraced in the limits of the said township of North Brunswick.

3. And be it enacted, That any person sent from the corporation of the city of New Brunswick or township of East Brunswick to the said Poor Farm or any person born upon the said Poor Farm shall

not by reason of any residence or being born on said farm acquire a residence or settlement in the said township of North Brunswick. The place of settlement of any person sent as aforesaid to the said Poor Farm or born thereon shall be determined in all cases without reference to their residence or being born on said Poor Farm.

9 4. And be it enacted, That this act shall take effect immediately.

Together with all and singular the buildings, improvements, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and every part and parcel thereof; and also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of aforesaid townships of North Brunswick and East Brunswick to the said premises and to every part and parcel thereof; to have and to hold the same to the said party of the second part, their successors and assigns, to the use of the party of the second part, their successors and assigns.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in the presence of—

JAMES C. EDMONDS.
WILLIAM DUNHAM.
ABRAHAM L. VAN LIEW.
ELLSWORTH FARMER, JR.
[L. S.] JAMES H. WEBB.
JOHN GRIGGS.
JOHN CULVER.
CHARLES P. BLEW.
JOSEPH H. BLOODGOOD.

(Four, eighty, and part interlined; also townships of North Brunswick and East Brunswick and twenty, the said party of the first part and heirs erased and successors interlined before execution; also Leonard Appleby erased; also a majority of interlined.)

HENRY V. SPEER.

10 STATE OF NEW JERSEY, } ss:
Middlesex County, }

Be it known that on this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-two, before me, one of the masters of the court of chancery of New Jersey, personally appeared James Edmonds, William Dunham, Abraham L. Van Liew, Ellsworth Farmer, and James H. Webb, John Griggs, John Culver, Charles P. Blew, and Joseph H. Bloodgood, who, I am satisfied, are the grantors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed, and thereupon delivered

the same as their voluntary act and deed for the uses and purposes therein expressed.

HENRY V. SPEER,
Master in Chancery.

Received March 28, 1862, and recorded by—
N. BOORAEM, *Clerk.*

STATE OF NEW JERSEY, *Middlesex County,* } ss:

I, Charles S. Hill, clerk of said county of Middlesex, do hereby certify that the foregoing is a true, full, and correct copy of the above deed as the same is recorded in my office in Book 87 of Deeds, pages 541, etc.

Witness my hand and seal of said county this 10th day of October, A. D. 1881.

CHARLES S. HILL, *Clerk.*

11 Assembly. No. 39.

STATE OF NEW JERSEY.

An act to authorize the township committees of the townships of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the Poor Farm, in the township of North Brunswick, together with all the personal property on said farm.

Whereas, by an act of the Legislature passed February twenty-eighth, anno Domini one thousand eight hundred and sixty, the then township of North Brunswick was divided into the townships of North Brunswick, East Brunswick, and New Brunswick, and the town committees of said townships were authorized and required to divide the real and personal property of the township of North Brunswick between the new townships of North Brunswick, East Brunswick, and New Brunswick; and whereas the Poor Farm, which is situate in the limits of the present township of North Brunswick and which belonged to the former township of North Brunswick, and the personal property thereon, has never been divided, but is owned and held in common by the said townships of North Brunswick, East Brunswick, and the corporation of the city of New Brunswick, which said corporation has, by an act of the Legislature passed March fifteenth, anno Domini one thousand eight hundred and sixty-one, succeeded to and become invested with and entitled to all the rights and property of the said township of New Brunswick; and whereas such ownership and holding in common is found inconvenient and injurious; and whereas the said townships of North Brunswick and East Brunswick have agreed with the corporation of the city of New Brunswick to convey and sell to the said corporation of
12 the city of New Brunswick all their and each of their right, title, interest, and estate in the said Poor Farm and personal

property thereon for the sum of two thousand six hundred and eleven dollars and thirteen cents, the value of the interest of those townships therein: Therefore

1. Be it enacted by the senate and general assembly of the State of New Jersey, That the township committees of the townships of North Brunswick and East Brunswick, or a majority of each of the said town committees, be, and they are hereby, authorized and empowered to convey all the right, title, interest, and estate of the said townships in the said Poor Farm and the personal property thereon to the said corporation of the city of New Brunswick for the sum aforesaid.

2. And be it enacted, That the said Poor Farm and the personal property thereon shall be at all times hereafter liable and subject to taxation by the said township of North Brunswick so long as it is embraced in the limits of the said township of North Brunswick.

3. And be it enacted, That any person sent from the corporation of the city of New Brunswick or township of East Brunswick to the said Poor Farm or any person born upon the said Poor Farm shall not by reason of any residence or being born on said farm acquire a residence or settlement in the said township of North Brunswick. The place of settlement of any person sent as aforesaid to the said Poor Farm or born thereon shall be determined in all cases without reference to their residence or being born on said Poor Farm.

4. And be it enacted, That this act shall take effect immediately.

13 *Argument.*

1. It is agreed by and between the attorney for the said plaintiff in certiorari and the attorney for the said defendant that the sole question to be discussed is whether the Poor Farm, situated in the township of North Brunswick and owned by the city of New Brunswick, is exempt from taxation, and that the same be considered as properly presented by the pleadings.

2. That the Poor Farm referred to, the buildings thereon, and the furniture and fixtures therein are used exclusively for charitable purposes by the city of New Brunswick, the owner thereof.

Brief.

New Jersey Supreme Court.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK

vs.

NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

Plaintiffs' points.

1. The Poor Farm, owned by the city of New Brunswick, is situated in the township of North Brunswick and is used by the city of

New Brunswick exclusively for charitable purposes. The buildings thereon and the furniture therein is likewise used exclusively for the same purpose, the Poor Farm being used as a place to which the city of New Brunswick sends its paupers and there supports them out of the money appropriated by the city of New Brunswick.

14 This being the case, the land, the buildings thereon, and the furniture therein is exempt from taxation under the provisions of the general tax law. Revision, page 1152, sec. 11.

After enumerating certain things which are exempt from taxation, it says: "And all buildings used exclusively for charitable purposes, and the land whereon the same was erected, and which may be necessary for the fair enjoyment thereof, and the furniture and personal property used therein," &c.

2. Any former acts which imposed taxation upon the Poor Farm in question is repealed by the repealer, which is a part of the general tax law, which can be found on page 1160 of the Revision, sec. 32.

This repealer, in express language, says, among other things (after particularizing certain acts): "And all other acts or parts of acts, whether special or local or otherwise, inconsistent with the provisions of this act be, and the same are hereby, repealed, except an act entitled 'A further supplement to the act entitled An act concerning taxes,' approved April 14th, 1846, which supplement was approved March 24, 1864, and such special or local acts as shall have been approved since the year 1862: Provided, That the supplement to the charter of Jersey City, approved March 29th, 1866, and the acts and parts of acts thereby reinstated shall not be affected by this act."

The act to which we refer in this case and by which the city of New Brunswick was enabled to purchase said Poor Farm was passed in the year 1862, and therefore does not come within the exceptions made in the above repealer.

It is well settled that a special law may be repealed by a general one by express words or necessary implication.

State, Button *vs.* Blake, 6 Vroom, 208; 7 Vroom, 442.
State, Morris & E. R. R. Co. *vs.* Commissioners, 8 Vroom, 228; 9 Vroom, 422, 479.
State *v.* Gorum *v.* Mills, 5 Vroom, 177, 180.

3. The Legislature by their express words repealed all laws,
15 local or special, under which such property as the Poor Farm in question was taxed. It was intended by that general act to exempt all such properties from taxation in the future, and the general repealer was certainly intended to reach just such a case as the one now before the court.

4. It may be contended that there is a contract between the city of New Brunswick and the township of North Brunswick for the payment of this tax, but such is not the case. The Legislature at the time simply said that such a purchase of property could be made, and furthermore said that it hereafter should be subject to taxation.

The authority to tax was given by the Legislature, not by any private agreement, and if the Legislature had the right to pass such an act they undoubtedly had a right to repeal it, as they did by passing the supplement to the general tax law in 1866 with an express repealer of former acts.

For the above reasons it is submitted that the levying of the tax in question should be set aside and declared to be illegal and contrary to law.

HOWARD MACSHERRY,
Attorney for Plaintiff in Certiorari.

16 *Brief.*

New Jersey Supreme Court.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK

vs.

NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

Defendant's points.

The question to be determined is, Does the general tax law of 1866 take away the right of taxing the Poor Farm and the personal property thereon vested in the township of North Brunswick by the special act of February 18, 1862, and the contract in the deed from the township to the city made in pursuance thereof.

It cannot unless—

1. The general law has repealed the special, and then not unless—
2. The contract in the deed is one that can be impaired by subsequent legislative enactment.

1. A general law applicable to the entire State will not modify, in whole or in part, a special act unless by express words or necessary implication.

State, Gorum *vs.* Mills, 5 Vroom, 180.

A general repealer in a general tax law cannot disturb the provisions of a special act unless by clear expression it is made to embrace and is applied to the particular subject of the special act.

State, Morris and Essex R. R. Co. *vs.* Comm., IX Vroom, 475.

That is not the case here.

17 The object and purpose of the special act were to authorize the townships to sell and the city to buy certain real estate and to fix the consideration to be paid therefor.

It was enacted to meet special circumstances and for special consideration.

It is in no way connected with the general tax law, and therefore cannot be repealed by a general repealer in the latter. Nor can it be supposed it was the intention of the Legislature, by a supplement

to a general tax law, to modify the terms of a particular contract made years before between the city and township.

The act of 1866 is entitled A further supplement to the act concerning taxes of 1846, and there is nothing in its title to show that it was intended to apply to the special act of 1862, and if, therefore, it was intended to repeal that act it would be to that extent unconstitutional.

Reader *vs.* Township of Union, 10 Vroom, 509, and 12 Vroom, 292.

2. The right of the township to levy and collect a tax upon the Poor Farm and the personal property thereon became vested in the township of North Brunswick by the special act of 1862 and the contract in the deed made in pursuance thereof, and no subsequent legislative enactment could impair or destroy it.

This tax was as much a part of the consideration which the city agreed to pay for the farm as was the sum of money paid down in cash, and the city is as much bound by its contract to pay the tax as the township is bound by the conveyance.

The Legislature cannot, even by direct enactment, take away the property of a township without consideration or, what is the same thing, release its debtor from paying that consideration after he has received the property.

A municipal corporation is to be protected in its private and vested rights the same as an individual or private corporation.

Dillon on Municip. Corp., § 69, note.
29 Vermont, 12 and 19.
27 Vermont, 704.

18 The property of a municipal corporation is protected by the clause in the national Constitution securing the inviolability of contracts, and all legislative authority over it must be exercised in subordination to this guaranty, and it is subject to legislative control to the same extent but no greater than all other property in the State.

Grogan *vs.* San Francisco, 18 Cal., 590.

The Legislature cannot deprive municipal corporations of their vested rights in property.

Dartmouth College *vs.* Woodward, 4 Wheaton, 694.
See Cooley's Constitutional Limitations, § 237 and § 238.
Cooley on Taxation, § 494.
People *vs.* Surrogate, 58 N. Y., 1.
People *vs.* Fields, 58 N. Y., 491.
2 Kent's Com., § 305.
Terrett *vs.* Taylor, 9 Cranch, 43–45.
Dillon on Municipal Corp., § 40, note.

We conclude, therefore,—

1st. That the act of 1866 did not repeal or modify the special act of 1862, and if it had—

2d. That the right of taxing the farm had become vested in the

township before the passage of the act of 1866, and had passed out of legislative control.

JOHN S. VOORHEES,
Attorney for Defendant in Certiorari.

19 NEW JERSEY, *To wit:*

[L. S.] The State of New Jersey to Nelson Williamson, collector of the township of North Brunswick:

We being willing for certain reasons to be certified of a levying of tax for the year eighteen hundred and eighty against property owned by the mayor and common council of the city of New Brunswick and situated in the township of North Brunswick, we command you that the said tax levy and all the proofs, proceedings, orders, &c., of said township touching and concerning said tax levy, as they remain before you, may be called to our supreme court, at Trenton, on the — day of ——, you certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done.

Witness Edward W. Scudder, justice supreme court, at Trenton, this — day of October, eighteen hundred and eighty-one.

BENJAMIN F. LEE, *Clerk.*

HOWARD MACSHERRY, *Attorney.*

20 [Endorsed:] New Jersey supreme court. The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. Writ of certiorari. Howard MacSherry, att'y. Allocatur Nov. 7, 1881. E. W. Scudder, justice sup. c't. Filed June 5, 1883, Benj. F. Lee, cl'k.

21 New Jersey Supreme Court. February Term, 1883.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK
vs.
NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

The court having heard the argument of counsel and duly inspected the assessment removed by the writ in the cause and duly considered the reasons filed, it is ordered that said assessment be set aside, made void, and for nothing holden, with costs to the prosecutors.

Entered April 20th, 1883.

On motion of—

HOWARD MACSHERRY, *Att'y.*

22 [Endorsed:] New Jersey supreme c't. The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. On certiorari. Copy of judgment. Howard MacSherry, att'y.

23 NEW JERSEY, *To wit:*

[L. S.] The State of New Jersey to our justices of our supreme court, Greeting:

Forasmuch as in the record and proceedings and also in the giving of judgment in a plaint which was in our said supreme court, before you, between The State, The Mayor and Common Council of the City of New Brunswick and Nelson Williamson (collector of the township of North Brunswick), defendant, on a certiorari issued out of our said supreme court to the said Nelson Williamson (collector of the township of North Brunswick), as is said, manifest error hath intervened, to the great damage of the said Nelson Williamson (collector of the township of North Brunswick), as by his complaint we are informed, we, being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you that, if judgment be thereupon given, then, without delay, you send,

24 distinctly and openly, under your seal, the records and proceedings and plaint aforesaid, with all things touching and concerning the same, to our court of errors and appeals on the twentieth day of October next, wheresoever they should be in said State, together with this writ, that, the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness our chancellor and presiding judge of our said court of errors and appeals, at Trenton aforesaid, the third day of October, in the year of our Lord one thousand eight hundred and eighty-two.

HENRY C. KELSEY, *Clerk.*

JOHN S. VOORHEES, *Attorney.*

25 [Endorsed:] Court of errors and appeals. The State, The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. Writ of error to supreme court. John S. Voorhees, att'y. Filed June 25, 1883. Henry C. Kelsey, clerk.

The answer of the justices of the supreme court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *Ch. Jus.* [L. S.]

26 New Jersey Court of Errors and Appeals. March Term, 1884.

NELSON S. WILLIAMSON, Collector of the Township of North Brunswick, Plaintiff in Error,

vs.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK, Defendants in Error.

In error to supreme court.

This cause coming on to be heard at the present term of this

court, in the presence of the counsel of the respective parties, and the court having duly considered the arguments of counsel and examined the record and proceedings brought up by the writ of error in the above-stated cause and finding no error therein—

It is thereupon, on this twenty-eighth day of April, A. D. eighteen hundred and eighty-four, by the court now here, ordered and adjudged that the judgment of the supreme court removed by the writ of error in this cause be, and the same is hereby, affirmed in all things, with costs to be taxed.

27 And it is further ordered that the record be remitted to the supreme court, to be therein proceeded with in accordance with this judgment and the practice of said court.

On motion of—

HOWARD MACSHERRY.
Att'y of Defendants in Error.

STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of state of the State of New Jersey and *ex-officio* clerk of the court of errors and appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of an order made in the above-stated cause as the same is taken from and compared with the minutes of said court.

In witness whereof I have hereunto set my hand and affixed my official seal this twelfth day of December, A. D. eighteen hundred and eighty-four.

[L. S.] HENRY C. KELSEY.

28 [Endorsed:] New Jersey court of errors and appeals. Nelson S. Williamson, collector, &c., pl'ff in error, *vs.* The State, The Mayor and Common Council of the City of New Brunswick, def'd't in error. In error to supreme court. Order affirming judgment. Howard MacSherry, att'y. Filed Dec. 12, 1884. Benj. F. Lee, clerk.

29 I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of the entire proceedings in the above-stated cause as the same remains of record and on file in my office.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this nineteenth day of October, A. D. eighteen hundred and eighty-five.

[Seal of the Supreme Court.]

BENJ. F. LEE, *Clk.*

30 [Endorsed:] New Jersey supreme c't. The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. On certiorari. Copy of papers, &c. Howard MacSherry, att'y. $1.72.

31 New Jersey Supreme Court. November Term, 1884.

STATE, THE MAYOR, &c., OF THE CITY OF NEW BRUNSWICK
vs.
NELSON S. WILLIAMSON, Collector, &c.

In error. Remittitur.

It appearing by the remittitur now here returned from the court of errors and appeals that the judgment of this court was in and by said court of errors and appeals in all things affirmed, it is ordered that said remittitur be filed and that said cause proceed according to law.

Entered December 12th, 1884.

On motion of—

HOWARD MACSHERRY, *Attorney.*

I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in above-stated cause by said court and entered in the minutes thereof.

32 In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this twenty-sixth day of August, A. D. eighteen hundred and eighty-five.

[Seal of the Supreme Court.]

BENJ. F. LEE, *Clk.*

33 [Endorsed:] New Jersey supreme c't. The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. On certiorari. Copy of judgment, &c. Howard MacSherry, att'y.

34 To the Honorable Joseph P. Bradley, one of the justices of the Supreme Court of the United States:

And now comes Nelson Williamson, collector of the township of North Brunswick, of the county of Middlesex and State of New Jersey, by John S. Voorhees, his attorney, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between The State of New Jersey, The Mayor and Common Council of the City of New Brunswick, prosecutors, plaintiffs in certiorari, and Nelson Williamson, collector of the township of North Brunswick, defendant therein, in the supreme court of judicature of the State of New Jersey, on remittitur from the court of errors and appeals of said State, that being the highest court of law or equity of said State in which a decision could be had in said suit, and in which said supreme court a final judgment was rendered against him

35 in said suit, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of said State and of an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein

was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or a commission held under the United States and the decision was against the right, privilege, or immunity specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, all which appears in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said Nelson Williamson, collector of the township of North Brunswick.

36 Whereupon he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

JOHN S. VOORHEES,
Attorney of Plaintiff in Error.

37 [Endorsed:] Supreme Court U. S. The State of New Jersey, The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. Petition for writ of error. John S. Voorhees, att'y.

This petition is granted September 1st, 1885.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. States.

38 UNITED STATES, *ss:*

The President of the United States to the honorable, the justices of the supreme court of the State of New Jersey, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which — in said supreme court, before you or some of you, on a remittitur from the court of errors & appeals of said State, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of New Jersey, The Mayor and Common Council of the City of New Brunswick, prosecutors, plaintiffs in certiorari and Nelson Williamson, collector of the township of North Brunswick, defendant therein, upon an assessment of taxes made by the assesssor of the township of North Brunswick for the year 1878 on certain lands and real estate of said prosecutors situate within the limits

39 of said township of North Brunswick and known as the "Poor Farm," wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or redemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage

of the said Nelson Williamson, collector of the township of North Brunswick, as by his complaint appears, we, being willing
40 that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the first day of September, in the year of our Lord one thousand eight hundred and eighty five.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

41 [Endorsed:] Supreme Court of the United States. Nelson Williamson, collector of the township of North Brunswick, *ads.* The State of New Jersey, The Mayor and Common Council of the city of New Brunswick. Writ of error to the supreme court of New Jersey. John S. Voorhees, attorney. Ret'ble 2 Monday in October, 1888. This writ is allowed by Joseph P. Bradley, associate justice of the Supreme Court of the United States.

The answer of the justices of the supreme court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within we are commanded.

[Seal of the Supreme Court.]

M. BEASLEY, *C. J.*

42 The United States of America to The State of New Jersey, The Mayor and Common Council of the City of New Brunswick, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New Jersey, wherein Nelson Williamson, collector of the township of North Brunswick, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice Supreme Court of the United States, this first day of September,

43 in the year of our Lord one thousand eight hundred and eighty-five.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of U. States.

[Endorsed:] Supreme Court U. S. 1885, October term. The State of New Jersey, The Mayor and Common Council of the City of New Brunswick *vs.* Nelson Williamson, collector of the township of North Brunswick. Citation. John S. Voorhees, att'y.

Received a copy of the within notice Sept. 22d, 1885.
JOHN P. STOCKTON, *Att'y Gen'l.*

44 UNITED STATES OF AMERICA, } *ss:*
Third Circuit and District of New Jersey, }

Harry T. Edgar, of full age, being duly sworn according to law, on his oath says that he served the within citation on John P. Stockton, attorney general, at his office, in the city of Trenton, on the twenty-second day of September instant, by exhibiting the same to the person in charge of said office and by delivering to him a true copy thereof; and that he further served said citation on Howard McSherry and Frederick Weigle, attorneys of the defendants, The Mayor and Common Council of the City of New Brunswick, on the twenty-third day of September instant, by exhibiting the same to them and by delivering to each of them a true copy thereof.

HARRY T. EDGAR.

Sworn and subscribed this 23rd day of September, in the year one thousand eight hundred and eighty-five, before me—

[Seal Theodore B. Booraem, Notary Public, New Jersey.]

THEO. B. BOORAEM, JR.,
Notary Public, New Jersey.

45 [Endorsed:] Supreme Court of the United States. Nelson Williamson, collector of the township of North Brunswick, *ads.* The State of New Jersey, The Mayor and Common Council of the City of New Brunswick. Citation and proof of service. John S. Voorhees, attorney.

46 New Jersey Supreme Court.

THE STATE, THE MAYOR AND COMMON COUNCIL OF THE *of the* CITY OF NEW BRUNSWICK,
vs.
NELSON WILLIAMSON, Collector of the Township of North Brunswick.

On certiorari.

Know all men by these presents that we, Nelson S. Williamson, Peter Williamson, Philip Kuhlthau, Henry E. B. Dennison, and John S. Voorhees, of the township of North Brunswick, in the county of Middlesex and State of New Jersey, are held and firmly bound unto the Mayor and Common Council of the city of New Brunswick

in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said The Mayor and Common Council of the city of New Brunswick, or to their certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eighth day of May, in the year of our Lord one thousand eight hundred and eighty-five.

47 Whereas the above-named Nelson Williamson, collector of the township of North Brunswick, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of the State of New Jersey:

Now, therefore, the condition of the above obligation is such that if the above-named Nelson Williamson, collector of the township of North Brunswick, shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then the above obligation to be void, or else remain in full force and virtue.

PHILIP KUHLTHAN. [SEAL.]
PETER WILLIAMSON. [SEAL.]
NELSON S. WILLIAMSON. [SEAL.]
H. E. B. DENNISON. [SEAL.]
JOHN S. VOORHEES. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN S. VOORHEES.

UNITED STATES OF AMERICA,
Third Circuit and District of New Jersey, } ss:

John S. Voorhees, of full age, being being duly sworn according to law, on his oath says that the signature of John S. Voorhees subscribed to the foregoing bond is in the proper handwriting of

48 this deponent; that the remaining four obligors named in said bond and whose signatures are thereto attached are well known to this deponent; that they all signed said bond in the presence of this deponent; that, with the exception of Peter Williamson, they are all freeholders and are all residents in the county of Middlesex and State of New Jersey, and are worth in the aggregate, as this deponent is informed and believes, much more than the sum of two thousand dollars after the payment of all their just debts and liabilities; that this deponent is a resident and freeholder in said county of Middlesex and is personally worth more than the sum of two thousand dollars after the payment of all his just debts and liabilities.

JOHN S. VOORHEES.

Sworn and subscribed this 28th day of August, A. D. 1885, before me—

[Seal William Muirheid, U. S. Commissioner, District of New Jersey.]

W. MUIRHEID.

49 [Endorsed:] Copy. Bond. Nelson Williamson and others to the Mayor and Common Council of the city of New Brunswick.

This bond is approved on 1st Sept., 1885, by one Joseph P. Bradley, associate justice of the Supreme Court of the United States.

50 And the said prosecutor, by John S. Voorhees, his attorney, comes before the said the Supreme Court of the United States and says that in the record and proceedings aforesaid and in the giving of judgment aforesaid there are manifest errors, and he respectfully assigns the following as errors therein:

1st. Because by the record aforesaid it appears that the judgment in form aforesaid was given for the said The State of New Jersey, the Mayor and Common Council of the City of New Brunswick against the said Nelson S. Williamson, collector of taxes in the township of North Brunswick, prosecutor, whereas by the law of the land judgment ought to have been given for the said Nelson S. Williamson, collector of taxes in the township of North Brunswick, prosecutor, against the said The State of New Jersey, The Mayor and Common Council of the City of New Brunswick.

2nd. Because said court decided that the lands of the said defendant, The Mayor and Common Council of the City of New Brunswick, situate in the township of North Brunswick, county of Middlesex and State of New Jersey, known and designated as the "Poor Farm" of the city of New Brunswick, by reason of an act of the Legislature of the State of New Jersey entitled "A further supplement to an act entitled 'An act concerning taxes,' approved April fourteenth, eighteen hundred and forty-six, approved April 11, A. D. 1866," are not subject to taxation by the township of North Brunswick, whereas said lands were and are, by virtue of a contract

51 between the township of North Brunswick and the city of New Brunswick and State of New Jersey, contained in an act of the Legislature of said State entitled "An act to authorize the township committees of the township- of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the 'Poor Farm,' in the township of North Brunswick, together with all the personal property on said farm," approved February 18, A. D. 1862, and a certain deed of conveyance, dated March 27, A. D. 1862, and recorded in the office of the clerk of said county of Middlesex in Book 87 of Deeds, page 541, etc., whereby said farm was conveyed by the townships of North Brunswick and East Brunswick to the city of New Brunswick, owned and held by the said the Mayor and Common Council of the city of New Brunswick, liable and subject to taxation by the said township of North Brunswick so long as it remains embraced in the limits of said township.

3d. Because said court decided that the said prosecutor was not entitled to collect the taxes assessed by the township of North Brunswick for the year eighteen hundred and seventy-eight upon the "Poor Farm" of the city of New Brunswick, embraced within the limits of the township of North Brunswick, because the said

52 farm was exempt from taxation by an act of the Legislature of New Jersey entitled "A further supplement to an act entitled An act concerning taxes," approved April fourteenth, eighteen hundred and forty-six, approved April 11, A. D. 1866, whereas said farm was and is, in and by a contract of the State of New Jersey contained in an act of the Legislature of said State entitled "An act to authorize the township committees of the townships of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the 'Poor Farm,' in the township of North Brunswick, together with all the personal property on said farm," approved February 18, A. D. 1862, under and by virtue of which said last-mentioned act said lands were conveyed by the township of North Brunswick to and were accepted by the said city of New Brunswick subject to the express contract or agreement that the same should be held liable and subject to taxation as aforesaid, and in and by a contract of the said The Mayor and Common Council of the city of New Brunswick, embraced in the deed whereby said farm was conveyed as aforesaid, made liable and subject to taxation by the said township of North Brunswick so long as it remains embraced within the limits of said township, and by reason thereof the owners of said land are liable to taxation by the township of North Brunswick on account of the same.

53 4th. Because said court decided that said contract, so far as embraced in said act of the Legislature of said State entitled "An act to authorize the township committees of the township of North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the 'Poor Farm,' in the township of North Brunswick, together with all the personal property on said farm," approved February 18, 1862, and in said deed of conveyance, was subsequently repealed and annulled in and by an act of the Legislature of said State entitled "A further supplement to an act entitled An act concerning taxes," approved April fourteenth, eighteen hundred and forty-six, approved April 11, 1866, whereas said last-named act by its provisions impaired the obligation of said contracts and for other reasons was repugnent to the Constitution of the United States and void.

5th. Because said court decided that there was no contract existing between the said township of North Brunswick and the said city of New Brunswick that said "Poor Farm" should be held by the city of New Brunswick liable and subject to taxation by the township of North Brunswick so long as it is embraced within the limits of said township, whereas in truth and in fact said "Poor Farm" was conveyed by the township of North Brunswick to

54 the city of New Brunswick subject to a contract expressed in the said deed of conveyance and in said act of the Legislature of the State of New Jersey entitled "An act to authorize the township committees of the townships — North Brunswick and East Brunswick, in the county of Middlesex, to convey to the corporation of the city of New Brunswick the 'Poor Farm' in the township of North Brunswick, together with all the personal property

on said farm," approved February 18, 1862, that the same should be so held. And the said Nelson S. Williamson, collector of taxes in the township of North Brunswick, prosecutor, prays that the judgment aforesaid, for the errors aforesaid and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that he may be restored to all things which he has lost by occasion of said judgment.

JOHN S. VOORHEES,
Attorney for and of Counsel with Plaintiff in Error.

Nelson S. Williamson, collector of taxes in the township of North Brunswick, prosecutor, puts in his place John S. Voorhees, his attorney, to prosecute his writ of error against the State of New Jersey, the Mayor and Common Council of the City of New Brunswick.

55 [Endorsed:] United States Supreme Court. Nelson S. Williamson *vs.* The State, The Mayor and Common Council of the City of New Brunswick. Assignment of errors.

56 New Jersey Supreme Court. February Term, 1882.

STATE, MAYOR, &C., OF NEW BRUNSWICK, Prosecutors,
vs.
NELSON WILLIAMSON, Collector of North Brunswick.

1. A declaration in general law that all acts or parts of acts, whether local or special or otherwise, inconsistent with its provisions are repealed—will repeal inconsistent provisions in prior special acts.
2. A special law authorized the township of North Brunswick to convey to the city of New Brunswick a poor farm owned by the former and situate within its limits and declared that the farm should be liable to taxation by the township so long as it should be embraced within it, and under this law the conveyance was made. Held, that the Legislature could constitutionally repeal this power of taxation.

Certiorari to Review Taxes of 1878.

Argued at November term, 1881, before Justices Knapp and Dixon.

For the plaintiffs, Howard McSherry.
For the defendant, John S. Voorhees.

The opinion of the court was delivered by Dixon, J.:

57 By a special act passed February 18th, 1862 (Pamph. L, p. 52), the township committees of North Brunswick and East Brunswick, in Middlesex county, were authorized to convey their interest in the Poor Farm in North Brunswick and the personal effects thereon to the city of New Brunswick, and the second section of the act provided that the said farm, with the personalty thereon, should be at all times thereafter liable to taxation by said township of North Brunswick so long as it should be embraced within the limits of said township. In accordance with this statute

these committees conveyed said property to the city by deed of March 27th, 1862, and taxes have been regularly levied thereon by the township of North Brunswick and paid by the city of New Brunswick up to the year 1878, the taxes for which year are now resisted.

Two questions are raised for decision: First, whether the Legislature has declared its purpose to repeal this second section; second, whether, if it has, such purpose can constitutionally be enforced.

As to the first point reliance is placed solely on the general tax law approved April 11th, 1866 (Rev., p. 1150), the fifth section of which enacts that the property of the cities of the State and all buildings used exclusively for charitable purposes, with the land
58 whereon the same are erected and which may be necessary for the fair enjoyment thereof, and the furniture and personal property used thereon, shall be exempt from taxation, and the thirty-second section of which expressly declares that all acts and parts of acts, whether special or local or otherwise, inconsistent with the provisions of that act shall be and are thereby repealed, except one act approved in 1864 and such special or local acts as had been approved since the year 1862.

It is conceded that the Poor Farm and personalty now in dispute come within the classes of property described as exempt in this act of 1866, but it is insisted that the repealing clause, being contained in a general law, cannot be considered as designed to disturb the special law of 1862 without more explicit declaration of the purpose to do so than is here found.

The rules by which to determine whether a repeal is intended are sufficiently recognized in former decisions of this court to make any further research unnecessary.

A general law applicable to the entire State will not modify or repeal a special act unless by express words or necessary implication. State, Gorum, pros., *v* Mills, 5 Vroom, 177. But there is no rule of law which prohibits the repeal of a special act by a general
59 one, nor is there any principle forbidding such repeal without the use of express words declarative of the legislative intent to repeal the earlier statute. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general enactment is sufficiently manifested when the provisions of both cannot stand together, and it is a cardinal doctrine in the construction of statutes that, if possible, full effect shall be given to all their parts. State, M. & E. R. R. Co., pros., *v.* Comm'r of R. R. Taxation, 8 Vroom, 228.

Under the guidance of these rules the course of decision seem plain. The special and local act of 1862 provides that this property shall be subject to taxation; the general act of 1866 provides that all such property shall be exempt. The inconsistency of these provisions is clear. The general law declares that all special and local acts inconsistent with its provisions are repealed. It is impossible to give full effect to this language and perserve in operation the statute of 1862. The Legislature could not have indicated its purpose to repeal this special act more unmistakably than it has done in

this general law, unless it had expressly mentioned the special act, and such mention is not necessary for its abrogation. The decisions in Mechanics' and Tradesmen's Bank *v.* Bridges, 1 Vroom,
60 112, and State *v.* Miller, 1 Vroom, 368, appear to be directly in point. There a general tax law of 1862 was held to have repealed inconsistent provisions in the earlier charters of Jersey City and the M. & E. R. R. Company because of the clause in the general law, that all acts, whether special or local or otherwise, inconsistent with its provisions should be repealed. These words were said to be so strong as to admit of no doubt about the intention to repeal, so specific and precise as to show a clear intention of the Legislature to alter the mode of taxation before subscribed in all special acts they had power to interfere with. The same words in the present law must have the same effect. The purpose to repeal is manifest.

Second. Had the Legislature the power to repeal? It is denied upon the ground that the provisions of the act of 1862 became by the subsequent conveyance a contract between the township and the city which the Legislature could not impair.

This claim is quite inadmissable. It is not necessary to consider whether municiple corporations can acquire vested rights in property which the Legislature cannot take away or whether these bodies are entitled to the constitutional protection of contracts. For the present case it is sufficient to decide whether one Legislature can confer
61 upon such a corporation a power of taxation which subsequent Legislatures are unable to revoke, against the objection of the municipal-ty itself. For the affirmative of this question no semblance of authority has been produced to us. The general principle is that the power of the Legislature over corporations created for purposes of local government is supreme, and that no contract with such corporations arises from the delegation of authority to them. Tinsman *v.* B. D. R. R. Co., 2 Dutcher, 148; Mayor, &c., *v.* J. C. and B. R. R. Co., 5 C. E. Green, 360; Rader *v.* Southeasterly Road Dist., 7 Vroom, 273.

A distinction has been sometimes drawn between what are called the governmental or public character of these corporations and their proprietary or private character, and it has been claimed that in the latter aspect they are to be regarded as private bodies, so far as relates to the protection of their property; but even those insisting upon this distinction have conceded that over their political or governmental powers the authority of the Legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some peculiar provision of the constitution. 1 Dill. on Mun. Corp. (3d ed.), § 66. Now, certainly there can be no shadow of support for a claim that the power of taxation is in any sense the private property of the municipality; it is peculiarly public, govern-
62 mental, and as such must at all times be susceptible to modification or repeal, according to legislative discretion, so far as the mere right of the corporation to exercise it is concerned.

Third. It is suggested that the title of the act of 1866, being a supplement to an act concerning taxes, does not express the object

now sought to be accomplished by it. We think this position groundless. The title declares a purpose to legislate concerning taxes; this embraces an intention to repeal prior inconsistent laws.

The tax must be set aside with costs.

A true copy.

BENJ. F. LEE, *Clk.*

63 Court of Errors and Appeals. March Term, 1884.

NELSON WILLIAMSON, Collector, Plaintiff in Error,
v.
THE STATE, THE MAYOR, &c., OF NEW BRUNSWICK, Prosecutors, Defendants in Error.

On error to the supreme court.

For opinion of the supreme court see 15 Vroom, 165
For the plaintiff in error, John S. Voorhees.
For the defendant in error, Howard McSherry.

The CHANCELLOR: The judgment in this case should be affirmed for the reasons given by the supreme court.

PATERSON, *J.*, (dissenting):

This judgment, in my opinion, should be reserved for the reason, first, because the land was conveyed under a contract for a special purpose authorized by an act of the Legislature, and that act incorporated in the deed; and, second, because no law could have intended that lands owned and used for any purpose by one municipality within the territory of another should be exempt from taxation. Under the circumstances of this case such a statutory construction will impair and destroy what I must regard as a solemn right
64 of contract between the parties, sanctioned by State legislation. With the guaranty of that high authority no judicial decree should interfere unless the grantees be required to reconvey the property and place that in the same situation in which it stood before the deed was passed. I am very clear that any other result must work great injustice to the township of North Brunswick, and therefore cannot affirm the judgment below.

For affirmance: The Chancellor, Chief Justice, Depue, Magie, Parker, Reed, Scudder, Van Syckel, Clement, Cole, Whitaker—12.

For reversal: Paterson—1.

A true copy.

[Seal of the Secretary of the State of New Jersey.]

HENRY V. KELSEY,
Secretary of State.

65 A further supplement to an act entitled "An act concerning taxes," approved April fourteenth, eighteen hundred and forty-six.

1. Be it enacted by the senate and general assembly of the State

of New Jersey, That a poll tax not exceeding one dollar shall be assessed upon every white male inhabitant of this State of the age of twenty-one years and upwards, except the polls of all volunteers and sailors who have served for the period of one year or more, also those wounded or discharged in consequence thereof, in the armies or navies of the United States who have been honorably discharged, and of all paupers, idiots, and insane persons: Provided, That nothing in this shall in anywise interfere with the poll tax required to be raised by any special law in payment of bounties.

2. And be it enacted, That all real and personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation at the full and actual value thereof on the day in each year when by law the assessment is to commence, at such rate per dollar as will be sufficient to produce the sum required to be raised, together with an addition thereto not exceeding ten
66 per centum of such sum to meet contingencies after deducting the poll tax and the tax derived from foreign insurance companies.

3. And be it enacted, That the term real estate, as used in this act, shall be construed to include all lands, all water power thereon or appurtenant thereto, and all buildings or erections thereon or affixed to the same, trees and underwood growing thereon, and all mines, quarries, peat and marl beds, and all fisheries.

4. And be it enacted, That the term personal estate, as used in this act, shall be construed to include goods and chattels of every description, including steamboats and other vessels, money debts due or owing from solvent debtors, whether on contract, note, bond, mortgage, or book account, public stocks and stocks in corporations, whether said personal estate be within or without this State.

5. And be it enacted, That the following persons and property shall be exempt from taxation, viz.:

I. The property and the bonds and other securities of the United States and the bonds and securities of this State which are by law exempt from taxation, the property of the counties, townships, cities, and boroughs of this State, and stocks and other personal
67 estate owned by citizens of this State situate and being out of this State upon which taxes shall have been actually assessed and paid within twelve months next before the day prescribed by law for commencing the assessment.

II. All colleges, academies, or seminaries of learning, public libraries, school-houses, building- erected and used for religious worship and the land whereon the same are situate necessary to the fair use and enjoyment thereof, not exceeding five acres for each one, the furniture thereof and the personal property used therein, the endowment or fund of any religious society, college, academy, seminary of learning or public library: Provided, That no building so used which may be rented for such purposes and rent received by owner therefor shall be exempted; the stock of any corporation of this State which by charter or other contract with this State is expressly exempted from taxation, the stock of any corporation of this State the capital whereof is by this act made taxable to

and against said corporation, pews in churches, grave-yards not exceeding ten acres of ground, cemeteries and all buildings erected thereon, and all buildings used exclusively for charitable purposes,
68 with the land whereon the same are erected and which may be necessary for the fair enjoyment thereof and the furniture and personal property used therein, the funds of all charitable institutions and associations collected and held exclusively for the sick or disabled members thereof, or for the widows of deceased members, or for the education, support, and maintenance of the children of deceased members.

* * * * * * *

32. And be it enacted, That the forty-fifth section of the act to which this is a supplement and the several supplements to the act to which this is a further supplement, approved March twenty-sixth, eighteen hundred and fifty two, entitled "An act to provide for the collection of taxes due from banks and banking associations of this State," and the supplements approved March third, eighteen hundred and fifty-four, March fifteenth, eighteen hundred and sixty-one, March eleventh, eighteen hundred and sixty-two, March twenty-eighth, eighteen sixty-two, March twenty-fifth, eighteen hundred and sixty-three, April fourteenth, eighteen hundred and sixty-four, and a second supplement, eighteen hundred and sixty-four, and April fifth, eighteen hundred and sixty-five, and all other acts or parts of acts, whether special or local or otherwise, inconsistent with the provisions of this act be, and the same are hereby,
69 repealed, except an act entitled "A further supplement to the act entitled 'Act concerning taxes,'" approved April fourteenth, eighteen hundred and forty-six, which supplement was approved March twenty-fourth, eighteen hundred and sixty-four, and such special or local acts as shall have been approved since the year eighteen hundred and sixty-two: Provided, That the supplement to the charter of Jersey City approved March twenty-ninth, eighteen hundred and sixty-six, and the acts and parts of acts thereby reinstated shall not be affected by this act.

33. And be it enacted, That this act shall take effect immediately.

Approved April 11, 1866.

Endorsed on cover: New Jersey Supreme Court. No. 193. Nelson Williamson, collector of the township of North Brunswick, plaintiff in error, *vs.* The State of New Jersey and The Mayor and Common Council of the City of New Brunswick. Filed November 6, 1885.

FILED
JAN 17 1889
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

NELSON S. WILLIAMSON, Collector of Taxes of the Township of North Brunswick,

Plaintiff in Error.

vs.

THE STATE OF NEW JERSEY, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK.

Defendants in Error.

Brief on Behalf of Plaintiff in Error.

JOHN S. VOORHEES,

Attorney for Plaintiff in Error.

NEW BRUNSWICK, N. J.:
THE FREDONIAN PUBLISHING COMPANY'S PRINT,
1889.

and against said corporation, pews in churches, grave-yards not exceeding ten acres of ground, cemeteries and all buildings erected thereon, and all buildings used exclusively for charitable purposes, with the land whereon the same are erected and which
68 may be necessary for the fair enjoyment thereof and the furniture and personal property used therein, the funds of all charitable institutions and associations collected and held exclusively for the sick or disabled members thereof, or for the widows of deceased members, or for the education, support, and maintenance of the children of deceased members.

* * * * * * *

32. And be it enacted, That the forty-fifth section of the act to which this is a supplement and the several supplements to the act to which this is a further supplement, approved March twenty-sixth, eighteen hundred and fifty two, entitled "An act to provide for the collection of taxes due from banks and banking associations of this State," and the supplements approved March third, eighteen hundred and fifty-four, March fifteenth, eighteen hundred and sixty-one, March eleventh, eighteen hundred and sixty-two, March twenty-eighth, eighteen sixty-two, March twenty-fifth, eighteen hundred and sixty-three, April fourteenth, eighteen hundred and sixty-four, and a second supplement, eighteen hundred and sixty-four, and April fifth, eighteen hundred and sixty-five, and all other acts or parts of acts, whether special or local or otherwise, inconsistent with the provisions of this act be, and the same are hereby,
69 repealed, except an act entitled "A further supplement to the act entitled 'Act concerning taxes,'" approved April fourteenth, eighteen hundred and forty-six, which supplement was approved March twenty-fourth, eighteen hundred and sixty-four, and such special or local acts as shall have been approved since the year eighteen hundred and sixty-two: Provided, That the supplement to the charter of Jersey City approved March twenty-ninth, eighteen hundred and sixty-six, and the acts and parts of acts thereby reinstated shall not be affected by this act.

33. And be it enacted, That this act shall take effect immediately.

Approved April 11, 1866.

Endorsed on cover: New Jersey Supreme Court. No. 193. Nelson Williamson, collector of the township of North Brunswick, plaintiff in error, *vs.* The State of New Jersey and The Mayor and Common Council of the City of New Brunswick. Filed November 6, 1885.

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THE STATE OF NEW JERSEY, THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK.

STATEMENT OF THE CASE.

The Township of North Brunswick, in Middlesex County, New Jersey, previous to the execution and delivery by it of the deed of conveyance hereinafter mentioned, was the owner in its own right in fee of a farm located within its bounds on which it kept its paupers, and from that fact called the "Poor Farm."

By Special Act of the Legislature of New Jersey, approved February 28, 1860, parts of the township of North Brunswick, and of the adjacent township of Monroe, were set off and established a separate township to be called East Brunswick, and part of the township of North Brunswick was set of and established a separate township to be called the township of New Brunswick.

The Act, after providing for the election of Township Committees in the townships of East Brunswick and North Brunswick, further provided as follows: "And "be it further enacted that on the first Tuesday in May, "next, the Town Committees of the said townships of "North Brunswick, East Brunswick and New Brunswick "shall meet at the inn kept by Saxon M. Tice, in the said "new township of East Brunswick, at ten o'clock in the "forenoon of that day, and shall then and there proceed by "writing, signed by a majority of those present, to allot, "divide and assign to the said townships of East Brunswick and New Brunswick such proportions of all "the real estate and personal property, and of all surplus "moneys of the said township of North Brunswick then on "hand, due or owing, arising from taxes on dogs, road "taxes, taxes for the support of the poor, for the education of children, as the taxable property and ratables of "those parts of the townships of East Brunswick and New "Brunswick which are taken off from the township of "North Brunswick bears to the whole taxable property and "ratables of the present township of North Brunswick, according to the last assessment, and the said townships of "East Brunswick and New Brunswick shall be liable to pay "a like proportion of the debts of said township of North "Brunswick, if any there shall be at that time; and that "the said Township Committees shall then and there also "proceed to make a distribution between the three townships of North Brunswick, East Brunswick and New "Brunswick of such poor persons as shall be chargeable "upon said township of North Brunswick at or immediately preceeding the time at which this Act is to take "effect." (Laws of New Jersey, 1860, page 162.)

Under the foregoing provision all the property of the township of North Brunswick was equitably divided among the three, except the said "Poor Farm," and the

personal property on and used in connection with it. The farm was situated within the bounds of North Brunswick, but an agreement was reached by which it was to be conveyed for a money consideration to New Brunswick, subject, however, to certain conditions and provisions in favor of North Brunswick. To authorize the conveyance and secure these conditions additional legislation was obtained.

In the mean time the township of New Brunswick and the city of New Brunswick were by the Legislature reincorporated as one corporate body under the name of the corporation of the City of New Brunswick, and the said corporation was made subject to all the liabilities of the inhabitants of the township of New Brunswick (See Transcript of Records, page 1, §3.)

The Legislature of New Jersey, by Special Act, approved February 18, 1862, after reciting the original Act, the division of property thereunder, and the said agreement, enacted :

" 1. That the Township Committees of the townships of " North Brunswick and East Brunswick, or a majority of " the said Town Committees, be and they are hereby au- " thorized and empowered to convey all the right, title, " interest, and estate of the said townships in the Poor " Farm, and the personal property thereon, to the said cor- " poration of the City of New Brunswick, for the sum " aforesaid."

2. *That the said Poor Farm and the personal property thereon shall be at all times thereafter liable and subject to taxation by said township of North Brunswick, so long as it is embraced in the limits of the said township of North Brunswick.*

3. That any person sent from the corporation of the city of New Brunswick or township of East Brunswick

to the said Poor Farm, or any person born upon the said Poor Farm shall not by reason of any residence or being born on said farm acquire a residence in the said township of North Brunswick. (See Pamphlet Laws of New Jersey for 1862, page 52, and Transcript of Record, page 6.)

Under the authority of this Act the township on March 27, 1862, conveyed the Poor Farm and the personal property on it to the City of New Brunswick, and *incorporated this statute with these provisions in the body of the deed as a part of the contract under which the conveyance was made.* (See Transcript of Record, pages 2 to 6.)

Thus the provision that the Poor Farm, and the personal property on it, should be taxable by the township of North Brunswick as against the City of New Brunswick so long as embraced within the limits of the township, became a contract between them and a condition of the conveyance authorized by the Legislature, and an esential consideration moving the township to convey.

The City took title upon these terms, entered into and still holds possession thereunder, and the Farm is still located within the limits of the township.

A general tax law approved April 11, 1866, provided that all property of cities, and property held for charitable purposes should be thereafter exempt from taxation, and repealed all acts and parts of acts (with certain enumerated exceptions), whether special, local or otherwise, inconsistent with its provisions.

The Poor Farm and personal property on it were duly assessed by the township each year at the same rate and in the same manner as other property in the township, and such taxes were regularly paid by the city until the year

1878, when payment was resisted under the claim that the general tax law of 1866 exempted said property from taxation.

A writ of certiorari was issued out of the Supreme Court of New Jersey, at the suit of the State of New Jersey and the Mayor and Common Council of the City of New Brunswick against Nelson S. Williamson, Collector of the Township of North Brunswick, to receive and set aside the assessment for that year

The Supreme Court of New Jersey by its judgment entered April 20, 1883, held that said Poor Farm and personal property were exempt from taxation under said general tax law, and ordered the assessment set aside. (See Opinion of the Court, page 21, and judgment thereon, page 11 of the Transcript of Record.)

From this judgment the plaintiff in error took a writ of error to the Court of Errors and Appeals of New Jersey. The Court of Errors and Appeals affirmed the judgment for the reasons given in the opinion of the Supreme Court and ordered the record remitted to that Court to be proceeded with in accordance with the practice of the Court. (See opinion of the Court of Errors and Appeals, page 24. and judgment thereon, page 13 of the Transcript of Record.)

This writ of error is prosecuted to remove the said judgment of the Supreme Court of the State of New Jersey affirmed by the Court of Errors and Appeals of said State, and reverse the said judgment and to have the said Poor Farm and personal property thereon declared liable and subject to taxation by the township of North Brunswick, in accordance with the terms of said conveyance.

The assignment of errors may be found in Transcript of Record, page 19, and are as follows:

1. Because judgment on said certiorari was rendered for the prosecutors, whereas by the law of the land it ought have been given for the defendant.

2. Because the Court decided that the land known as the "Poor Farm," and the personal property thereon, located in the township of North Brunswick, but belonging to the city of New Brunswick, were exempt from taxation by said township by an Act of the Legislature of New Jersey, entitled "A further supplement to an Act entitled 'An Act concerning taxes,' approved April fourteenth, eighteen hundred and forty-six, approved April 11th, A. D. 1866." Whereas, by a previous e press contract between the said township of North Brunswick and the city of New Brunswick and the State of New Jersey, contained in an Act of the Legislature of said State, entitled "An Act to "authorize the Township Committees of the townships "of North Brunswick and East Brunswick, in the County "of Middlesex, to convey to the corporation of the City of "New Brunswick the "Poor Farm" in the township of "North Brunswick, together with all the personal property "on said farm," and in the deed conveying said farm and property from said township to said city, in pursuance of said Act, said lands and property were to be held by said city liable and subject to taxation by said township of North Brunswick so long as they remained embraced in the limits of said township.

3 Because the Court decided that the defendant in certiorari was not entitled to collect taxes assessed by said township upon said "Poor Farm" and property because the same were exempt from taxation by an Act of the Legislature of New Jersey, approved April 11, 1866. Whereas, by a contract of said State, contained in an Act of its Legislature, approved February 16, 1862, and a contract of said prosecutor contained in the deed of convey-

ance, authorized by said Act, said lands and property were conveyed and accepted expressly subject to such right of taxation.

4. Because said Court decided that said contract was annulled by a subsequent Act of the Legislature of New Jersey. Whereas, said subsequent Act impaired the obligation of said contract, was repugnant to the Constitution of the United States and void.

5. Because said Court decided that there was no such contract existing. Whereas, in fact said "Poor Farm" was conveyed, as aforesaid, subject to such express contract contained in the deed of conveyance and in the Act of the Legislature authorizing the same.

The township of North Brunswick and the city of New Brunswick were and are municipal corporations. They were duly incorporated by the Legislature of New Jersey and invested with all the ordinary rights and powers of such corporations.

As early as 1692 the several counties in New Jersey were divided into townships for the purposes of electing officers, of "taxing and collecting of several rates for public uses, etc." (See Grants and Concessions of the Province of New Jersey, Leaming & Spicer, pages 320 and 328.)

In 1760 provision was made for "running the lines of "the townships in each county agreeably to former settle- "ments thereof, but so as to include all the inhabitants "that taxes may be impartially levied." (See 2 Nevill's Acts of the General Assembly of the Province of New Jersey, page 322.)

Under this Act the lines of the township of North Brunswick were "run." In 1798, by an Act of the Coun-

cil and General Assembly, entitled "An Act incorporating "the inhabitants of townships, designating their powers "and regulating their meetings," the inhabitants of the township were duly incorporated and were "constituted a "body politic and corporate in law, to be styled and known "by the name of the inhabitants of the township of North "Brunswick, in the County of Middlesex." The Act gave the several townships incorporated under it, among other things, power to elect officers, make by-laws, raise money for maintenance and support of the poor and other purposes, to own property and to sue and be sued. (See Laws of the State of New Jersey, by William Patterson, pages 276–77. Also a Digest of Laws of New Jersey, by Lucius Q. C. Elmer, page 571F.)

This Act, with slight modifications, is still in force. (See Revision of the Statutes of New Jersey, 1877, page 1191.)

The city of New Brunswick was incorporated in 1849 by an Act entitled "An Act to incorporate the city of "New Brunswick" by the name of "the Mayor, Recorder, "Aldermen and Common Councilmen of the city of New "Brunswick." They and their successors forever thereafter were given the powers of perpetual succession, of suing and being sued, of using a common seal, of purchasing, holding and conveying real estate, of passing by-laws and other powers incident to such corporations. (See Laws of New Jersey, 1849, page 65.)

In 1860 the city was set off from the township of North Brunswick, of which it had formed a part, and established a seperate township, and its inhabitants and their successors constituted a body politic and corporate by the name of "the inhabitants of the township of New Brunswick, in "the County of Middlesex," and were, in their corporate capacity, "invested with, and entitled to the same rights,

" powers, privileges and authorities " as were vested in the several townships in the County of Middlesex. (See Laws of New Jersey, 1860, page 162.)

In 1861 an Act was passed entitled " A further supple-
" ment to the Charter of the city of New Brunswick, ap-
" proved February twentieth, eighteen hundred and forty-
" nine," which enacted that " the city and township of
" New Brunswick are hereby declared one corporate body
" under the Charter of said city, the supplements thereto
" and this Act, and that the corporate name or style be
" changed to " The Corporation of the City of New
" Brunswick," and said corporation, and the inhabitants
" thereof, in their said corporate capacity, are confirmed
" and continued in all the rights, etc., . . . of the said
" city, and subject to all its lawful debts, liabilities, duties
" and engagements, ... and shall and may have,
" enjoy and possess all the rights, etc., ... and
" shall and may be subject to all the liabilities, debts and
" duties now vested in, prescribed for or existing in or
" against ' the inhabitants of the township of New Bruns-
" wick, in the County of Middlesex " (See Laws of N. J.,
1861, page 507.)

By a subsequent amendment to the Charter the corporate name of the city was changed to " The Mayor and " Common Council of the City of New Brunswick." (Laws of N. J., 1863, page 347.)

The Supreme Court of New Jersey, among the reasons assigned for its judgment, says: " For the present case it " is sufficient to decide whether one Legislature can confer " upon such a corporation a power of taxation which sub-
" sequent Legislatures are ~~made~~ unable to revoke against the ob-
" jection of the municipality itself." (Transcript of Record, page 23.

It is submitted the case does not turn upon the question as thus stated. The tax in this case is in the nature of a ground rent. It is a right reserved by the grantor out of the land conveyed. The township of North Brunswick was seized in fee of the farm in question, in its private and proprietary character.

It had been acquired by the taxation of its inhabitants and the Legislature could not deprive them of it without their consent. (Cooley on Taxation, page 494.)

If it could not do so by direct means it is manifest it could not by indirect. The legislature authorized the township to convey the farm to the city for the consideration in part of the right of taxing it so long as it remained embraced within the township limits.

In taking title the city agreed to pay such tax; that is, to pay to the township an annual sum to be determined in amount by the annual tax rate of the township, so long as the farm remained under and received the benefits of the municipal government of the township. The right thus reserved of levying and collecting such tax became thereby vested in the township, and the amount when determined, its private property.

The case then does not involve the authority of the Legislature over the public and governmental powers of a municipal corporation, but over its private property and vested rights.

It is not whether one Legislature can confer upon such corporation a power of taxation which a subsequent Legislature cannot revoke that is brought in question, but whether a covenant in a deed conveying land from one municipality to another, made under the authority of a previous Legislature, that the land is thereby alienated and accepted, subject to the right of the grantor to tax it so long as it receives the benefits of the municipal government of the

grantor can be annulled at the will of a subsequent Legislature.

It is the private property of the township that is involved, and not its public and governmental powers.

This then is the question for adjudication: Is a contract of the nature of the one now in controversy within the protection of Article 1, Section 10, of the Constitution of the United States?

To answer this we must determine:

1. Whether the right of taxation can be the subject of contract?

2. Whether the contracts of municipal corporations are under the protection of the Constitution?

1. *Can the right of taxation be the subject of contract?*

The right of taxation and the public revenues may be the subject of contract to the same extent as any other right or property, and such contract is equally within the protection of the Federal Constitution.

Burroughs on Taxation, §66, page 109.
Cooley on Taxation, page 688F.
State Bank of Ohio *vs.* Knoop, 16 How., 360:369.
Bointdexter *vs.* Geenhow, 114 U. S., 270.

The provision in the Constitution that no State shall pass a law impairing the obligation of contracts is a limitation upon its taxing power as well as upon all its legislation, whatever form it may assume. Therefore, a law changing the stipulations of a contract or relieving a debtor from a strict and literal compliance with its requirements, enacted by a State in the exercise of that power, is unconstitutional and void.

Murray *vs.* Charlestown, 96 U. S., page 432.

Thus an Act of the Legislature which provides, that for a sufficient consideration, lands shall be exempt from taxation, when accepted, becomes a contract which subsequent legislation cannot impair even after the lands have been alienated

New Jersey *vs.* Wilson, 7 Cranch, 164.
Northwestern University *vs.* People, 99 U. S., 309.
Hardy *vs.* Waltham, 7 Pick., 108.
Landon *vs.* Lichfield, 11 Con., 251.

So also when a State has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary too meet such contract, the power can not be withdrawn until the contract is satisfied.

Wolf *vs.* New Orleans, 103 U. S., 358:367.

It is submitted that if the contracts of municipal corporations are protected by the Constitution the one in question is beyond legislative control.

2. *Are the contracts of municipal corporations under the protection of the Constitution.*

If the right of taxation can be the subject of contract then it is submitted that the judgment of the Supreme Court of New Jersy in this case can only be sustained upon the broad claim that municipal corporations may he divested of their private property without compensation at the will of the Legislature.

Such claim is vicious in principle and contrary to the great weight of adjudicated cases.

A. It is vicious in principle because—

1. The property of a municipality is acquired by the taxation of its citizens. If after they have taxed themselves for some local improvement, such, for

instance, as the building of an alms-house, they may be stripped of such property at the arbitrary will of the Legislature, all efforts at such local improvements will be paralyzed.

2. The taxing power rests upon an implied contract that in consideration of the benefits of government the people will contribute to maintain it. When the public revenues go to the municipal or State treasury through the ordinary channels of taxation the people taxed receive the benefits thereof but if the Legislature may take the product of taxation from one local government and give it to another, the fundamental contract is violated; those who bear the burden are not those who receive the benefit. One locality, for political or other reasons, may be favored and another ruined.

State, Baldwin *vs.* Fuller, 10 Vr., 576.

3. The Constitution of New Jersey, Art. 4, Sec. 7, c. 12, provides as follows: "Property shall be "assessed for taxes under general laws and by uni- "form rules, according to its true value."

To allow the Legislature to avoid the contract in question would be to take from the township of North Brunswick, without compensation, its private property acquired by the taxation of its citizens, and so lay upon them a burden which would not arise "under general laws," and according to "uniform rules." Such legislation is void.

See State *ex rel.* McCurdy *vs.* Tappen, 29 Wis., 664, for case arising under similar provision in the Constitution of Wisconsin.

4. The power which a State has of compelling a local government to tax its citizens, coupled with

the power to confiscate municipal property, would give it an equivalent to the right to take private property for public use without compensation. For such taxation would turn the private property of the citizens of the municipality into the municipal treasury and it could be there confiscated by the State to its own use.

The only safe and equitable adjudication of the law must be that the property of municipal corporations can only be taken by the State under general laws, and that such corporations are protected in their private and vested rights to the same extent as individuals or private corporations.

Opinions to the contrary have sprung from a failure to distinguish between their public powers and private rights.

Municipal corporations are entrusted with certain governmental powers as the mere agent of the State. No contract is implied on the part of the State in granting them, and they are therefore entirely subject to the legislative control. But a municipal corporation is an aggregation of individuals who, for territorial or other reasons, have certain interests in common. To further such common interests they contribute of their individual property to the municipal treasury by a self-imposed tax to be expended by the municipality for the common good. Such property, and all contracts relating thereto, should enjoy the same protection under the Constitution as the private rights of individuals.

B. Such claim is contrary to the great weight of adjudicated cases.

The question received judicial attention in the case of Dartmouth Collage *vs.* Woodward, 4 Wheat, 694F. In that case Judge Story lays down as a principle of law to which the public faith is pledged that a Legislature cannot arbi-

trarily deprive a municipal corporation of its vested rights nor take away its private property, nor change the uses of its private funds, acquired under the public faith, but must secure its property for the use of those at whose expense it was purchased. In this he followed an opinion previously expressed by him in Terrett *vs.* Taylor, 9 Cranch, 52.

See also Aspinwall *vs.* Commissioners of, &c., Daviess, 22 How., 377, 378.

It is admitted that the contract in question was valid when made. If the parties had power to contract then their contract is under the protection of the Constitution. The Constitution applies to *all* contracts. It excepts none. If this contract was valid when made no subsequent action by the State Legislature or judiciary can impair its obligation.

Green *vs.* Biddle, 8 Wheat., 1.
Havemeyer *vs.* Iowa Co., 3 Wall., 294.
Olcott *vs.* Fon du Lac Co., 16 Wall., 678.

The principle contended for has been adopted in a majority of the State courts where the question has arisen.

Thus it is held that the property of municipal corporations is protected by the clause in the National Constitution securing the inviolability of contracts, and that all legislative authority over it must be exercised in subordination to this guarantee.

Grogan *vs.* San Francisco, 18 Cal., 590.
Milwaukee *vs.* Milwaukee, 12 Wis., 93.
State *ex rel.* McCurdy *vs.* Tappan, 29 Wis., 664.
Hasbrouck *vs.* Milwaukee, 13 Wis., 37.
Aberdeen Academy *vs.* Aberdeen, 13 Smed. & Marsh (Miss.), 645–647.
Montpelier *vs.* East Montpelier, 29 Vt., 19.
Park Commissioners *vs.* Detroit, 28 Mich., 228.
Lowry *vs.* Francis, 2 Yerger (Tenn.), 534.

That it is not within the power of the Legislature to compel one municipality to contribute to the payment of the debts of another.

Matter of Lands in Flatbush, 60 N. Y. (15 Sick.) 398:407,
People *vs.* Batchellor, 53 N. Y., 128.
Horton *vs.* Town of Thompson, 71 N. Y., 513, 521.
Williams *vs.* Town of Duanesburgh, 66 N. Y., 129:134.

Nor to take the property of one municipality and give it to another.

State, St. Louis Police Com. *vs.* St. Louis Co., 34 Mo., 546:563.

Nor can the State sue for and recover property belonging to a municipality.

People *vs.* Ingersoll, 58 N. Y., 1.

Nor can the Legislature authorize a binding contract to be made creating a debt against a municipal corporation without its consent.

Atkins *vs.* Randolph, 31 Vt., 226:238.
People *vs.* Chicago, 51 Ill., 17:31.
People *vs.* Solomon, 51 Ill., 37.
Sleight *vs.* People, 74 Ill., 50.
Faas *vs.* Warner, 96 Pa. St., 215.

Cases in seeming contradiction go no further than to maintain the right to compel payment of debts not binding in law but which, nevertheless, are just and equitable and involve a moral obligation.

1 Dillon on Municipal Corporations, §44.

The Legislature can not divert money raised by taxation by a city for a specific purpose to any other purpose.

Wisconsin *vs.* Haben, 22 Wis., 660.

While a Legislature may change or destroy a municipal corporation it must, nevertheless, secure its property for the use of those for whom it was purchased.

Marietta *vs.* Fearing, 4 Ham. (Oh.), 427:432.

A Legislature may make a binding contract with a municipal corporation which it cannot subsequently impair.

Richland Co. *vs.* Lawrence Co., 12 Ill., 8.

So in Maine a statute divided a town and incorporated a new one, and provided that the latter should pay its proportion towards the support of paupers then on expense in the old town. A subsequent statute exonerating the new town from this liability was held to be unconstitutional.

Bowdoinham *vs.* Richmond, 6 Greenlf., 112.
See also Brunswick *vs.* Lichfield, 2 Greenlf., 28–32.

A municipal corporation, as to its private property, is entitled to all the rights and is subject to all the liabilities of a private corporation.

Bailey *vs.* Mayor of New York, 3 Hill, 531.

Even if the Court consider some of these cases as restricting legislative control over municipal property within too narrow limits, they are at least sufficient to establish all that is contended for in this case—that a contract between two municipal corporations, made with the full authority and consent of the Legislature and relating only to their private property, can not afterwards be annulled by the Legislature without the consent of the contracting parties.

That the contracts and private property of municipal

corporations are secured by the Federal Constitution is maintained by the best text writers.

See 2 Kent's Com. §275 and §305.
Cooley on Const. Limit., §237.
Cooley on Taxation, pages 491 and 688F.
Dillon on Municip. Corp., §36, §40F and notes, and §114.

For the foregoing reasons, and in view of the authorities cited, it is respectfully submitted that the contract in question in this case could not be annulled by any subsequent legislation and is still in force, and that the "Poor Farm," and the personal property thereon, belonging to the city of New Brunswick and located within the limits of the township of North Brunswick, are liable and subject to taxation by the township of North Brunswick.

JOHN S. VOORHEES,
Attorney for Plaintiff in Error.

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Brief on Behalf of Defendant in Error.

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Attorney for Defendant in Error.

NEW BRUNSWICK, N. J.:
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them out of money appropriated yearly by the said City of New Brunswick.

By a special act of the Legislature of the State of New Jersey, passed February 18, 1862, (*Pamph. L., pg.* 52,) the Township Committees of North Brunswick and East Brunswick, in said County of Middlesex, were authorized to convey their interest in the Poor Farm in said Township of North Brunswick, and the personal effects thereon, to the City of New Brunswick. And it was thereby further enacted that the said Poor Farm, with the personality thereon, should be at all times thereafter liable and subject to taxation by said Township of North Brunswick, so long as it should be embraced within the limits of said Township.

The said special act was repealed by the Legislature of said State by the passage of a general tax law, approved April 11, 1866, (Rev. of N. J., page 1150,) the fifth section of which act, after enumerating certain things which are exempt from taxation, enacts, "That "the property of counties, townships, cities and bor- "oughs of the State," and "all buildings used exclusively "for charitable purposes, with the land whereon the "same are erected, and which may be necessary for the "fair enjoyment thereof, and the furniture and personal "property used therein, shall be exempt from taxation," &c.

(*Transcript of Record, pages* 25 *&* 26.)

It is conceded that the Poor Farm, and the furniture and personal property thereon, are used exclusively for charitable purposes and come within the classes of property described as exempt under said act of April 11, 1866.

Any former acts which imposed taxation upon the Poor Farm in question are undoubtedly repealed by

the thirty-second section of the said general tax act of 1866, (Rev. p. 1160, Sec. 32), which repealer expressly declares (after particularizing certain acts) as follows, to wit: "And all other acts, or parts of acts, whether "*special*, or local, or otherwise, inconsistent with the "provisions of this act, be, and the same are hereby re- "pealed, except an act entitled, 'A Further Supplement "to an act entitled an Act Concerning Taxes,' approved "April 14, 1846, which supplement was approved March "24, 1864, and such special or local acts as shall have "been approved since the year 1862, provided that the "supplement to the charter of Jersey City, approved "March 29, 1866, and the acts and parts of acts thereby "reinstated shall not be affected by this act."

The act authorizing the sale of the Poor Farm in question to the city of New Brunswick, and the taxation of the same, was passed in the year 1862, and therefore does not come within the exceptions made in the said repealer.

It is well settled, that if two acts are so inconsistent and contrary that both can not stand together, the latter will abrogate the former; also that a special law may be repealed by a general one by express words or necessary implication.

State, Brittion vs. Blake, 6 *Vroom*, 35 *N. J., pg* 208.
Ib. 7 *Vroom*, 442, 36 *N. J.*
State, Morris & Essex R. R. Co. vs. Commissioners of Railroad Taxation. 8 *Vroom*, 37 *N. J., p.* 228.
State, Gorum, Pros., vs. Mills. 5 *Vroom*, 35 *N. J., p.* 180.

The same principle was held in the case now under discussion in the Supreme Court of the State of New Jersey.

State, Mayor, &c., of New Brunswick, Pros., vs. William-

son, Collector of North Brunswick. 15 *Vroom,* 44 *N. J., p.* 165.

Affirmed by Court of Errors and Appeals. 17 *Vroom,* 46 *N. J., p.* 204.

(*Transcript of Record, p.* 21.)

It was the clear intention of the Legislature, by the act of 1866, to repeal and abrogate the said special act of 1862, and by said repealer exempt from taxation all such property as the Poor Farm in question. It was intended by that general act to exempt all such properties from taxation in the future, and the repealer was certainly intended to reach just such a case as the one now before the Court. This is manifest.

The inconsistency of the two acts is very plain.

The general law declares that all special and local acts inconsistent with its provisions are repealed.

The intent to abrogate the particular enactment in an earlier statute by a general enactment in a later statute, is sufficiently manifested when the provisions of the two statutes are so inconsistent that they can not stand together.

State, Morris & Essex R. R. Co. vs. Commissioners. 8 *Vroom* (37 *N. J.*), *p.* 228.

State, Mayor of New Brunswick vs. Williamson, Collector, &c. 15 *Vroom* (44 *N. J.*), *p.* 165.

A Declaration in a general law that all acts or parts of acts, whether local, or special, or otherwise, inconsistent with its provisions, are repealed, will repeal inconsistent provisions in prior special acts.

State, Mayor of New Brunswick vs. Williamson, Collector, &c. 15 *Vroom* (44 *N. J.*), *p.* 165.
17 *Vroom* (46 *N. J.*), *p.* 204.
(*Transcript of Record, p.* 21.)

The Poor Farm being the property of a city, to wit, the City of New Brunswick, it comes within the exemption act, April 11, 1866.

Sec. 5—1. *Transcript of Record, p.* 25.

The Poor Farm is used solely for municipal purposes, and not as a source of revenue to the city.

Lands acquired by a city for purposes purely municipal are exempt from taxation.

State, Water Commissioners vs. Gaffney. 5 *Vroom* (34 *N. J.*), *p.* 131.

The State has the right to exempt from taxation particular items of property.

Tax Cases under Act March, 1841. 12 *Gill & J.* (*Md.*), *p.* 117.

The exemption from taxation of the real estate of the R. & D. R. R. Co., in the city of Richmond, is not unconstitutional, as being in conflict with the charter of said city, previously granted, giving the city power to tax real estate for city purposes.

City of Richmond vs. R. & D. R. R. Co. 21 *Gratt* (*Va.*), *p.* 604.

The legislative department of the State is the proper authority to determine what should and what should not properly constitute a public burden, and it alone in its discretion can direct what property shall be subject to taxation.

Cooley on Taxation, p. 41.
Cooley on Const. Limit. (3*d ed.*) §488 §514.

As a rule property dedicated to charity is not subject

to taxation. No general statute for taxing the property of all persons will be interpreted as embracing property dedicated to public use or mere benevolence, such as hospitals, alms houses, etc.

City of Louisville vs. Commonwealth. 1 *Duvall (Ky.)*, 295, 298–299.

The said city and township are both public corporations created for political purposes, with political powers to be exercised in the administration of civil and local government.

They are instruments and creatures of the State, subject to the supreme control of the Legislature. The powers conferred upon them may at any time be repealed or abrogated, and they may be changed, divided and even abolished at the will of the Legislature.

This principle has been followed by the best authorities, and by the United States and State Courts.

Cooley Const. Limit. (3*d Ed.*) §192, §193.
1 *Dill on Mun. Corp.* (3*d Ed.*) §54, §62.
McLean J., in State Bank vs. Knoop, 16 *How., U. S.*, 369, 380.
U. S. vs. Baltimore & O. R. R. Co., 17 *Wall.*, 322.
Sloan vs. State, 8 *Blackf.*, (*Ind.*) 361.
People vs. Morris, 13 *Wend.*, (*N. Y.*) 325.
Mayor vs. Jersey City & B. R. R. Co., 5 *C. E. Green*, (20 *N. J. Eq.*) 360.
Philadelphia vs. Fox, 64 *Pa.*, 169.
Montpelier vs. East Montpelier, 29 *Vt.*, 12.
Richmond Co. vs. Lawrence Co., 12 *Ill.*, 8
People vs. Chicago., 51 *Ill.*, 18.

Chief Justice Story in *Dartmouth College vs. Woodward*, 4 *Wheaton*, 518, says: "Public corporations are "such only as are founded by the government for pub- "lic purposes, when the whole interests belong to the "public. They are such as towns, cities, parishes and "counties."

The plaintiff and defendant in this suit are both of such a character; public political and governmental.

Such corporations can have no property, no interest which may not be taken away by the effect of legislation.

State vs. St. Louis County Court, 34 *Mo.*, 546, 549.

A corporation is public when invested with political powers or created to be employed or partake in the administration of the government, or when it is the mere instrument of the State, created for governmental and civil purposes.

City of Louisville vs. President, &c., B. Monroe, 15 *Ky.*) 645.

A county or city is not a private corporation having private rights conferred upon it, but is an agency of State government.

State vs. St. Louis County Court, 34 *Mo.*. 546.
Philadelphia vs. Fox, 64 *Pa.*, 169.

The power to tax said Poor Farm was given by the Legislature, not by any agreement between said City and Township, and if the Legislature had the right to pass such an act, they undoubtedly had a right to repeal it.

It is contended that the power of taxation having been conferred upon the Township of North Brunswick, the right to its continuation become vested in said Township, and when collected, its private property, and that it was in the nature of an irrepealable contract which the Legislature was bound to respect and could not impair.

1. *The said Township did not acquire, by virtue of said act of* 1862, *private property in the taxes to be collected in futuro upon said Poor Farm, nor vested rights in said tax which could not be disturbed by future legislation.*

The right to tax said Poor Farm was entirely of a political, public and governmental character, and as such was always subject to legislative control.

Taxation being solely and absolutely in the nature of a public and political right, the said Township could not thereby secure private or vested rights.

The rights of municipal corporations being granted for the purposes of the government, can never become such vested rights as against the State, that they cannot be taken away.

Cooley on Const. Limit. (3*d Ed.*), §192, §193, §235.
East Hartford vs. Hartford Bridge Co., 10 *How., U. S.* 511, 531.
City of Richmond vs. R. & D.R.R. Co., 21 *Gratt* (*Va.*) 604.
Philadelphia vs. Fox, 64 *Pa.*, 169.

Political powers conferred on a corporation for the local government of a place are not vested rights as against the State, and may be abrogated by the Legislature, as well by a general law affecting the whole State as by a special act altering the powers of the corporation.

Warner vs. Beers, 23 *Wend., N. Y.*, 103, 126.
People vs. Morris, 13 *Wend., N. Y.*, 325.
Purdy vs. People, 4 *Hill, N. Y.*, 391.
Gifford vs. Livingston, 2 *Denio, N. Y.*, 380.

The act of 1862 did not grant the power of taxation to said township for private advantage or emolument, but exclusively for public, political and municipal pur-

poses, and therefore the said township can not stand on the same footing as an individual.

Bailey vs. Mayor of New York, 3 *Hill*, 531.

The Legislature can not grant powers to counties, cities, &c., to assess and collect taxes for any other than corporate and public purposes.

Cooley Const. Limit., §129, §175, 3*d Ed.*
Harward vs. St. Clair Drainage Co, 51 *Ill.*, 130.
Trustees vs. People, 63 *Ill.*, 299.
Sleight vs. People, 74 *Ill.*, 47, 49.
McCurdy vs. Tappan, 29 *Wis.*, 664.

Nor could the Legislature grant power to a city to impose a tax for a private purpose.

A tax for a private purpose is invalid.

Burroughs on Taxation, §§ 12 & 17.
Whiting vs. S. & F. R. R. Co., 25 *Wis.*, 167.
Atkins vs. Town of Randolph, 31 *Vt.*, 247.

A franchise to a public corporation is subject to the superintendence and control of the State. Such corporations have no vested rights in their franchise.

Trustees vs. Tatman, 13 *Ill.*, 30.
Getzweller vs. People, 14 *Ill.*, 142.
People vs. Chicago, 51 *Ill.*, 18.
Phila. vs. Fox, 64 *Pa.*, 169.

Even the revenues of a public corporation, such as a county or city, are subject to the supreme control of the legislature.

Sagamon Co. vs. City of Springfield, 63 *Ill.*, 66, 71.
Dill on Mun. Corporations, 3*d Ed.*, § 62.

2. *The delegation of such legislative authority to said township was not such a contract as would prevent future legislation upon the same.*

Legislative acts respecting municipal corporations are not in the nature of contracts in the sense of the constitutional provision, which prohibits the obligation of contracts being violated.

1 *Dill on Mun. Corp.*, §61, §63.
Cooley on Const. Limit., 3*d ed.*, §192, §193, §235.
Kents Com., (3*d Ed.*) 2 *Vol.*, §305.
Hartford vs. Hartford Bridge Co., 10 *How., U. S.*, 511, 531.
Phila. vs. Fox, 64 *Pa.*, 169.
Mayor, &c., vs. J. C. & R. R. R. Co, 5 *C. E. Green, N. J.*, 360.
Rader vs. Southeasterly Road Dist., 7 *Vroom N. J.*, 273
Case under discussion, Transcript of Record, p. 23.

The laws which establish and regulate municipal corporations are not contracts, but ordinary acts of the Legislature.

Giving the municipal authorities exclusive right to establish ferries did not create a contract or vested rights, which the Legislature could not constitutionally change or annul.

Bossier vs. Shreveport, 5 *La. An.*, 661.
City of New Orleans vs. Hoyle, 23 *La. An.*, 740.
Rankin vs. Beaird, Breese, Ill., 163.
Halliday vs. People, 5 *Gill*, 10 *Ill.*, 214.

The money acquired by a county from the taxation of its citizens is not the private property of the county.

An act directing the county to appropriate part of its revenue already collected, in a particular way, is not un-

constitutional as being retrospective in its operation. It takes away no vested right, nor does it impair the obligation of contracts.

State, St. Louis Police Coms. vs. St. Louis County, 34 *Mo.*, 546.
1 *Dill on Mun. Corp.*, § 61.

There is nothing in this case which discloses a private or proprietary right in the Township of North Brunswick by virtue of the act of 1862; the State dealt with said Township as a municipal corporation, with reference to tax, a public, political, governmental matter, the most public known, over which the State has supreme authority, which springs from and is inherent in the State.

The State has no right to delegate away the power of taxation absolutely, to an inferior branch of its government. It would be ultra vires.

The following language used by Judge Dixon when this case was under review, is here applicable to wit: "Now, certainly there can be no shadow of support for "a claim that the power of taxation is in any sense the "private property of the municipality; it is peculiarly "public, governmental, and, as such must at all times "be susceptible to modification or repeal, according to "legislative discretion, so far as the mere right of the "corporation to exercise it is concerned."

Transcript of Record, pg. 23.

The judgment of the Supreme Court of the State of New Jersey as remitted from the Court of Errors and Appeals should be affirmed.

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